IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5672 of 1984

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI and

MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAKRABHAI C MOHANIYA

Versus

STATE OF GUJARAT

Appearance:

MR BR PARIKH for Petitioners

MS MANISHA LAVKUMAR, AGP For Respondent No. 1, 2, 3, 4, 5

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI and

MR.JUSTICE C.K.THAKKAR

Date of decision: 08/02/2000

ORAL JUDGEMENT

Per Thakker,J.:

This petition is filed by the petitioners for declaration that action taken by the respondent authorities of not granting land for cultivation by the petitioners was contrary to law and a prayer is made directing them to regularise the land which was in possession of the petitioners.

Petitioners, who claimed to be Adivasis , were residents of Panchmahals District . They were cultivating land in forest area. It was their case that they were in occupation of the land and lawfully cultivating it since many years. As per policy decision of the Government, the land was required to be given to them by regularising their possession. They, therefore, requested the authorities to regularise their possession. At that time, however, they were informed that as per policy decision of the Government, possession could not be regularised as it was after 1970. Some of the petitioners were informed as to why such regularisation cannot be made made in their favour. One of such letters is annexed to the petition at Annexure `D' dated March 8, 1979 addressed to Ramabhai Chuniyabhai Muniya, wherein it was stated that since the said petitioner was cultivating the land from 1971, the demand could not be accepted. It was stated by learned counsel for the petitioners that other petitioners were not granted land on the same ground.

Our attention, in this connection, was invited by learned counsel to a subsequent resolution issued by State of Gujarat on October 6, 1992 and in particular, the following part thereof:

> "(E) Scrutiny of such applications shall be made by the committee consisting of District Collector, DDO and Deputy Forest Conservator. This committee will take into consideration the evidence whether small schedule tribes people or backward class people or the farmers of Harijan class were given the benefit under any scheme before deciding as to whether the person concerned has made cultivation in the land of forest before 1980".

In para 2, therefore, it was stated as under :

> "(2) In the cases in which the forest

department has not registered the offence the following proceedings shall be initiated to decide as to whether the person concerned has done unauthorised cultivation before 1980. The cases to be regularised in this way shall be subject to the conditions (B), (C) and (D) stated above.

(A) On the basis of the offences registered by the forest department from 1967 to 1980 as per its crime register, a list shall be prepared of the persons doing unauthorised cultivation as per village and person.

(B) Some institutions and social workers had produced before the committee the documents showing that they had done cultivation in the forest before 1980. After scrutiny of the Government documents produced, it is proved that the person concerned has done cultivation before 1980, the forest department shall have to include his name in the list prepared as per crime register."

Thus, after issuance of resolution dated October 6, 1992, all persons who were cultivating the land as on October 25, 1980 were to be regularised. The case of the petitioners is that they are covered by the above resolution. In past, earlier their prayer was rejected only on the ground that they were cultivating the land after 1971 and hence it could not be regularised as per the policy of the Government.

Rule was issued, interim relief, so far as possession is concerned, was also granted. Today, the matter is taken up for final hearing.

Mr. Parikh for the petitioners submitted that even if it is assumed that earlier, the petitioners might not have legally enforceable right in view of the fact that case of the respondent authorities was that the petitioners were cultivating the land after 1967 or after 1971, they are covered by the resolution dated October 6, 1992 and their possession ought to be regularised inasmuch as all the petitioners were cultivating the land before October 25, 1980. He, therefore, submitted that this Court may issue a writ of mandamus directing the authorities to regularise their possession.

Ms Lavkumar, AGP for the respondent authorities, on the

other hand, submitted that as per the resolution , the committee will have to decide the claim of such persons. Drawing our attention to clause (E) of the circular, she submitted that a committee consisting of District Collector, District Development Officer and Deputy Conservator of Forest will have to take into consideration evidence regarding possession. The committee will take the decision in the light of relevant facts and circumstances and evidence.

In our opinion, no mandamus can be issued directing the respondent authorities to regularise possession of the petitioners . That question will have to be decided by the authorities in the light of the facts, circumstances and evidence before the committee which will scrutinise the claims of the petitioners considering the resolution. At the same time, direction can be issued to the committee to scrutinise the claims of the petitioners and to take appropriate decision in accordance with law.

The authorities will treat this petition as a representation . Learned counsel for the petitioners stated that the petitioners will give necessary copies of this petition to the committee members and the committee will decide them on such evidence. It is open to the petitioners to produce / adduce additional evidence if they think it to be necessary. The committee will decide the question expeditiously . Since the land petitioners are in possession, they will continue in possession. If the order is against the petitioners, it will not be implemented for a period of four weeks after they receive the order so as to enable them to take appropriate proceedings in accordance with law. In view of the fact that now Collector, Dohad is in the Committee, a copy of the representation as also of the writ will be sent to Collector, Dohad.

Petition is accordingly allowed. No order as to costs.

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parekh